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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/682,071

07/17/2001

Shantanu V. Kaushikkar

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07/23/2004

AFFYMETRIX, INC

ATTN: CHIEF IP COUNSEL, LEGAL DEPT.

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SANTA CLARA, CA 95051

EXAMINER

COUSO, JOSE L

ART UNIT

PAPER NUMBER

2621

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/682,071

Applicant(s)

KAUSHIKKAR ET AL.

Examiner

Jose L. Couso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-48 is/are allowed.
- 6) ☒ Claim(s) 49-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/4/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

**(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.**

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 49-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Itani et al. (U.S. Patent No. 6,650,364).

In regard to claim 49, Itani describes a gain value receiver that receives a user-selected gain value (refer for example to column 7, lines 42-46); a first gain controller that applies a first gain to the emission signal based, at least in part, on a first portion of the user-selected gain value (see figure 1A, element 119 and refer for example to column 5, line 49 through column 6, line 42); and a second gain controller that applies a second gain based, at least in part, on a second portion of the user-selected gain value (see figure 1A, element 119 and refer for example to column 5, line 49 through column 6, line 42).

With regard to claim 50, Itani describes receiving a user-selected gain value (refer for example to column 7, lines 42-46); applying a first gain to the emission signal based, at least in part, on a first portion of the user-selected gain value (see figure 1A, element 119 and refer for example to column 5, line 49 through column 6, line 42); and applying a second gain to the emission signal based, at least in part, on a second portion of the user-selected gain value (see figure 1A, element 119 and refer for example to column 5, line 49 through column 6, line 42).

3. Claims 51-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Zitelli et al. (U.S. Patent No. 4,016,557).

As to claim 51, Zitelli describes an auto-gain value selector (refer for example to column 1, lines 40-43); a first gain controller that applies a first gain to the emission signal based, at least in part, on a first portion of the auto-gain value (see figure 1); and a second gain controller that applies a second gain based, at least in part, on a second portion of the auto-gain value (see figure 1); an intensity manager that determines a plurality of sample pixel intensity values based on the emission signal having applied to it the first and second gains (refer for example to column 5, line 53 through column 6, line 4); a comparison manager that determines a comparison measure value based on comparing one or more of the plurality of sample pixel intensity values to one or more of a plurality of desired pixel intensity values (see figure 2, elements 20 and 21); and an auto-gain adjuster that adjust the auto-gain value based on the comparison measure (see figure 2, element 50).

With regard to claim 52, Zitelli describes selecting an auto-gain value (refer for example to column 1, lines 40-43); applying a first gain to the emission signal based, at least in part, on a first portion of the auto-gain value (see figure 1); applying a second gain to the emission signal based, at least in part, on a second portion of the auto-gain value (see figure 1); determining a plurality of sample pixel intensity values based on the emission signals having applied to it the first and second gains (refer for example to column 5, line 53 through column 6, line 4); determining a comparison measure based on comparing one or more of the plurality of sample pixel intensity values to one or more of a plurality of desired pixel intensity values (see figure 2, elements 20 and 21); and adjusting the auto-gain value based on the comparison measure (see figure 2, element 50).

In regard to claim 53, Itani describes a scanner having one or more excitation sources, an emission detector having a first gain, and a variable gain element having a second gain (refer for example to column 1, lines 10-16); and a scan gain controller that adjusts the first and second gains (see figures 1-2, element 50).

4. Claims 1-48 are allowed.

5. The following is an examiner's statement of reasons for allowance: The prior art of the record fail to teach or suggest singly and/or in combination a computer program product for adjusting the gain of a scanner having one or more excitation sources, an

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emission detector having a first gain, and a variable gain element having a second gain, wherein the computer program product when executed on a computer system performs a method comprising the steps of providing a first user interface constructed and arranged to enable a user to select a user-selected gain value, receiving the user-selected gain value, adjusting the first gain based, at least in part, on a first portion of the user-selected gain value, and adjusting the second gain based, at least in part, on a second portion of the user-selected gain value as prescribed for in the claimed invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Maselli, Chahal et al., Lewis, Jr., Fritz, Thomas et al., Kimoto et al., Loftman et al., Lucas and Itani et al. ('906), disclose systems similar to applicant's claimed invention.

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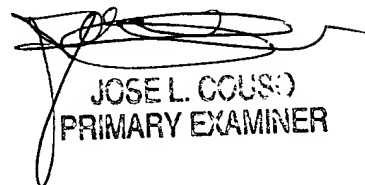
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jose L. Couso whose telephone number is (703) 305-4774. The examiner can normally be reached on Monday through Friday from 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Boudreau, can be reached on (703) 305-4706. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-8576.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jlc  
July 14, 2004

  
JOSE L. COUSO  
PRIMARY EXAMINER